IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHERE THE CASE IS OR IS NOT APPROVED FOR REPORTING

[Chapter VIII, Rule 32(2)(b)]
Description of case

Criminal Appeal No. 1270 of 2001 **Decided on: July 18, 2006**

ALONGWITH

Criminal Appeal No. 1271 of 2001

A.F.R. (Approved for Reporting)

Not approved for Reporting

Date. 18.07.2006

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the Judgment when it is put up before the Judges for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1270 of 2001
(Old No. 437 of 1987)

1. Satnam Singh
S/o Baba Singh

2. Baba Singh
S/o Sunder Singh
Both R/o Chandanpur,
P.S. Gadarpur, District Nainital.

…….. Appellants

Versus

The State …… Respondent

ALONG WITH

Criminal Appeal No. 1271 of 2001
(Old No. 533 of 1987)

Harbhajan Singh alias Bhagna Singh,
S/o Banta Singh,
R/o Chandanpur, P.S. Gadarpur,
District Nainital.

…….. Appellant

Versus

The State …….. Respondent

Mr. M.S. Pal, Senior Counsel assisted by Mr. D.N. Sharma, Counsel for the appellants.
Mr. D.K. Sharma, government Advocate with Mr. H.C. Pande, Addl. Government Advocate for the respondent-State.

Coram: **Hon'ble Rajeev Gupta, C.J.**
Hon'ble Prafulla C. Pant, J.

Dt: July 18, 2006.

[Per Hon'ble Prafulla C. Pant, J.]

These two appeals, preferred under section 374(2) of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), have arisen out of the same judgment and order dated 05.02.1987, passed in Sessions Trial No. 94 of 1984, by the then learned Sessions Judge, Nainital, whereby, accused / appellant Satnam Singh has been convicted under Section 302 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.), and sentenced to imprisonment for life. He is further convicted and sentenced to undergo rigorous imprisonment of two years under Section 324 read with Section 34 of the I.P.C. Accused / appellant Baba Singh has been convicted under Section 302 read with Section 34 of the I.P.C. and also under Section 324 of I.P.C. He is sentenced to imprisonment for life under Section 302 / 34 of the I.P.C., and further sentenced to undergo rigorous imprisonment of two years under section 324 of the I.P.C. accused / appellant harbhajan Singh has also been convicted under Section 302 read with Section 34 of the I.P.C. and under Section 324 read with Section 34 of the I.P.C. He is sentenced to imprisonment for life under Section 302 / 34 of the I.P.C., and further sentenced to undergo rigorous imprisonment of two years under Section 324 / 34 of the I.P.C.

2) We heard learned counsel for the parties and parties the entire record.

3) Prosecution story, in brief, is that about 10 – 12 days before the date of incident, some altercation took place between Kulwant Singh (deceased) and accused / appellant Satnam singh regarding irrigation through a water channel. On 17.03.1984, at about 6:30 P.M., when Kulwant Singh (deceased) reached near culvert on the bank of water canal, flowing towards Village Majra, he met accused / appellant Satnam Singh, who told him that he would be taught lesson for not permitting him (Satnam Singh) to irrigate his fields. Accused / appellant Baba Singh, armed with sword, and accused / appellant Harbhajan Singh, armed with spear, reached behind Satnam Singh on the spot. Accused / appellant Harbhajan Singh handed over his spear to Satnam Singh and exhorted him to kill Kulwant Singh. Kulwant Singh raised an alarm on which witnesses P.W. 1 Jaimal Singh, P.W. 2 Mula Singh and P.W. 5 Jeet Singh along with one more person rushed towards the spot. However, accused / appellant Satnam Singh, meanwhile, gave a blow with the spear on the chest of Kulwant Singh P.W. 2 Mula Singh, came forward to save his son Kulwant Singh (deceased), but accused / appellant Baba Singh hit a blow with the sword on the hand of Mula Singh and in the process injured him. Thereafter, all the three accused / appellants ran away from the place of occurrence. Meanwhile, Kulwant Singh died of the injuries on the spot. A First Information Report (Ext. A-1) of the incident was lodged by P.W. 2 Mula Singh, on 17.03.1984, at about 8:40 P.M.,

with police station Gadarpur. On the basis of the First Information Report, its check report (Ext. A -12) was prepared by P.W. 7 Head Constable Rameshwar Dutt Tyagi, who also made necessary entry in the general diary, copy of extract of which is Ext. A -13. P.W. 6 Sub Inspector Hemant Kumar Mishra started the investigation of the crime. He inspected the spot and took the dead body of Kulwant Singh in his possession, prepared the inquest report (Ext. A-5), sketch of the dead body (Ext. A -6), police form No. 13 (Ext. A -7), and letter (Ext. A-8) addressed to the Chief Medical Officer, requesting for postmortem examination of the dead body. Also, P.W. 2 Mula Singh was sent for medical examination, at about 11:00 P.M., on the same day to Primary Health Center, Gadarpur. Dead body of Kulwant Singh was sent for postmortem examination. P.W. 4 Dr. R.N. Singhal, conducted the autopsy on the dead body on 18.03.1984, at about 12:20 P.M., in L.D. Bhatt Hospital, Kashipur. The Medical Officer opined that Kulwant Singh had died on account of shock and haemorrhage due to injury over liver. The Investigating Officer further investigated the crime, prepared site plan (Ext. A -9) and recorded the statements of the witnesses. He also collected the simple soil and blood stained soil and prepared memo Ext. A-10. He also reovered spear (Ext. 1) used in the crime, and prepared memo thereof. On completion of the investigation, the Investigating Officer submitted charge sheet (Ext. A -11) to the Magistrate concerned, against all the three accused persons, namely Satnam Singh, Baba Singh and Harbhajan Singh.

4) The Magistrate on receipt of the charge sheet, it appears after giving necessary copies to the accused persons, as required under Section 207 of the Cr. P.C., committed the case to the court of Sessions for trial. Learned Sessions Judge, after hearing the prosecution and the defence, framed charge of two heads against accused / appellant Satnam Singh for the offences allegedly committed by him, punishable under Section 302 of the I.P.C., and the one under Section 324 read with Section 34 of the I.P.C. A separate charge was framed against accused / appellant Baba Singh of two heads relating to the offences, allegedly committed by him, punishable under Section 324 of the I.P.C. and under Section 302 read with Section 34 of the I.P.C. Also, a separate charge under two heads was framed against accused / appellant Harbhajan Singh relating to the offences, allegedly committed by him, punishable under Section 302 read with Section 34 of the I.P.C. and the one under Section 324 read with Section 34 of the I.P.C. All the three accused persons pleaded not guilty and claimed to be tried. On this, the prosecution got examined P.W. 1 Jaimal Singh (eyewitness); P.W. 2 Mula Singh (informant and injured eyewitness); P.W. 3 Dr. K.B. Singh (who medically examined injuries of Mula Singh); P.W.4 Dr. R.N. Singhal (who conducted the autopsy on the dead body of the deceased); P.W. 5 Jeet Singh (an eyewitness); P.W. 6 Sub Inspector Hemant Kumar Mishra (who investigated the crime) and P.W. 7 Head Constable Rameshwar Dutt Tyagi (who registered the F.I.R., prepared the check report (Ext. A -12) and made

necessary entry in the general diary, copy of extract of which is Ext. A -13). The entire oral and documentary evidence was put to the accused persons under section 313 of Cr.P.C. regarding which in their reply, the accused persons alleged that evidence adduced against them is false and they have falsely been implicated in the case due to enmity. No evidence in defence was adduced on behalf of the accused persons. The learned Sessions Judge, after hearing the prosecution and the defence, found all the three accused guilty of the charges framed against them, and after hearing on sentence, sentenced each one of the convict / appellants as mentioned earlier i.e. accused / appellant Satnam Singh was sentenced to imprisonment for life under Section 302 of the I.P.C., and further sentenced to undergo rigorous imprisonment of two years under Section 324 / 34 of the I.P.C. Accused / appellant Baba Singh was sentenced under Section 324 of the I.P.C. to rigorous imprisonment of two years. He was further sentenced under Section 302 / 34 of the I.P.C. to imprisonment for life. Accused / appellant Harbhajan Singh was sentenced under 302 / 34 of the I.P.C. to imprisonment for life. He was further sentenced to rigorous imprisonment of two years under Section 324 / 34 of the I.P.C. Aggrieved by said judgment and order dated 05.02.1987, the accused / appellants preferred these two appeals mentioned above, before the Allahabad High Court, from where both the Appeals were received by transfer to this Court under Section 35 of the U.P. Re-organization Act, 2000, for their disposal.

5) Before further discussions, it is pertinent to mention here, the ante mortem injuries found on the dead body of Kulwant Singh by P.W. 4 Dr. R.N. Singhal, at the time of conducting autopsy. The postmortem report (Ext. A -4) discloses following ante mortem injury on the body of the deceased:

> ***Stab wound with incised margins over right side of chest, 9 cm below right nipple measuring 4cm X 2 cm X cavity deep with a direction posteriorly, medially and downward.***

On internal examination the Medical Officer found that the right lung diaphragm as well as the liver of the deceased were ruptured. According to P.W. 4 Dr. R.N. Singhal, the deceased had died on account of shock and haemorrhage due to injury over liver. The Medical Officer further opined that the injury sustained by the victim was sufficient in the ordinary course of nature to cause his death.

6) It is also pertinent to mention here, before discussing the oral evidence of the eyewitnesses, that P.W. 3 Dr. K.B. Singh, who medically examined the injuries of Mula Singh (P.W. 2) found on 17.03.1984, at about 11:00 P.M., following injuries on the person of the injured, as mentioned in injury report (Ext. A -3):

1. ***Incised wound 5 cm X 0.5 cm X 0.5 cm over the dorsum of left hand extending from posterior to anteriorly oblique in direction, fresh bleeding present.***

2. ***Incised wound 1 cm X 0.25 cm X 0.25 over the dorsum of proximal phalanx of middle finger, fresh bleeding present.***

7) From the evidence on record, it is clear, that there were injuries also on the person of one of the accused namely, Baba Singh. To correctly appreciate the evidence of the eyewitnesses, it is also necessary to scrutinize the injuries found on the person of the accused / appellant Baba Singh, examined and recorded by P.W. 3 Dr. K.B. Singh on 18.03.1984, at 12:45 P.M., as mentioned in injury report (Ext. B-1):

1. ***Contusion 6 cm X 3 cm over the forehead in the middle. Reddish in colour.***
2. ***A linear scratch 7 cm in length over the lateral and anterior aspect of right shoulder; scab formation present.***
3. ***Incised wound 3 cm X 0.75 cm X 0.5 cm over the right forearm, oblique in direction from above to downward broader at lower end, wound was infracted and no bleeding was present.***
4. ***Incised wound 3 cm X 0.5 cm X 0.25 cm broader in middle extending from posteriorily above to downward and medially; wound was not healthy and no fresh bleeding was present.***

8) P.W. 2 Mula Singh, the informant and injured eyewitness, is father of Kulwant Singh (deceased). He

has stated on oath that a few days before the day of incident accused Satnam Singh and his son Kulwant Singh had an altercation over irrigating their fields. On the day of incident, in the evening, Kulwant Singh was going to bring some labourers. When he reached at culvert of water canal near field of Mahendra Singh, in village Chandanpur, he met accused Satnam Singh. He (Satnam Singh) told the deceased that he would teach him a lesson for not permitting to irrigate the fields. On this, accused Harbhajan Singh, who was following him handed over spear to accused Satnam Singh, who pierced the spear on the chest of Kulwant Singh (deceased). P.W. 2 Mula Singh further states that when he came forward along with Jaimal Singh (P.W. 1), Jeet Singh (P.W. 5) and one Trilok Singh from 'KOLLHU' (a boiling house with a sugarcane press mill) to save Kulwant Singh, accused Baba Singh gave him a blow of sword on his hand and injured him. Thereafter, the accused persons fled away from the scene of occurrence. P.W. 2 Mula Singh has stated that he lodged the First Information Report (Ext. A -1) with police station Gadarpur, on the day of incident and he also got his injuries medically examined on the same day. P.W. 1 Jaimal Singh, brother of the deceased, has corroborated the statement of his father P.W. 2 Mula Singh. P.W. 5 Jeet Singh, who is son-in-law of P.W. 2 Mula Singh, has also corroborated the prosecution story, as narrated above.

9) The statement of above three eyewitnesses namely, P.W. 1 Jaimal Singh, P.W. 2 Mula Singh and P.W. 5 Jeet Singh, though they are relatives of the deceased, appears

to be natural and trustworthy as to the commission of murder of Kulwant Singh as against accused /appellant Satnam Singh. No father or brother would save the real culprit and falsely implicated another in such an incident. Apart from this, the First Information Report is prompt, and the prosecution story as against accused / appellant Satnam Singh is corroborated by the postmortem examination report (Ext. A -4). But there is no evidence that accused / appellant Satnam Singh had common intention, in voluntarily causing hurt to Mula Singh, with accused / appellant Baba Singh.

10) So far as the common intention to commit murder, on the part of the accused / appellant Baba Singh and accused / appellant Harbhajan Singh, with accused / appellant Satnam Singh, is concerned, after close examination of the evidence on record, we do not find that there is any trustworthy evidence to prove the common intention on their part with accused / appellant Satnam Singh. P.W. 1 Jaimal Singh says that accused Harbhajan Singh gave spear to accused Satnam Singh, who gave a blow with it on the chest of Kulwant Singh, while P.W. 2 Mula Singh says that accused Satnam Singh took spear from the hand of accused Harbhajan Singh and committed murder of Kulwant Singh. As such, it is doubtful that accused / appellant Harbhajan Singh voluntarily handed over spear, or not to accused / appellant satnam Singh to commit the crime, particularly, when accused / appellant Harbhajan Singh had no enmity with the deceased. In the circumstances, it cannot be said that accused / appellant Harbhajan Singh had a common intention with accused /

appellant Satnam Singh to commit murder of Kulwant Singh. It is pertinent to mention here that accused / appellant Harbhajan Singh had no enmity with the deceased. Also, there is no evidence indicating that when accused / appellant Baba Singh gave blow with his sword on the hand of Mula Singh (P.W. 2), accused / appellant Harbhajan Singh had exhorted him to do so, or had a common intention with accused / appellant Baba Singh to voluntarily cause hurt to Mula Singh.

11) As far as accused / appellant Baba Singh is concerned, from the evidence of P.W. 1 Jaimal Singh, P.W.2, injured Mula Singh and P.W. 5 Jeet Singh, there is natural and trustworthy evidence supported by the medical report that he voluntarily caused hurt with a deadly weapon i.e. sword, on the person of Mula Singh. But, so for as common intention on the part of accused / appellant Baba Singh with accuse / appellant Satnam Singh to commit murder of Kulwant singh is concerned, it is also not proved on record if he had common intention to commit the murder. The reason to doubt the fact relating to common intention is this that Kulwant Singh (deceased) happened to meet accused / appellant Satnam Singh at the culvert of the canal and there is nothing on record to show that there was plan or prior meeting of minds on the part of accused / appellant Baba Singh with accused / appellant Satnam Singh to commit murder of Kulwant Singh. There is no explanation from the side of the prosecution regarding the injuries found on the person of Baba Singh, as mentioned in Ext. B. -1. The injury found on the

person of Baba Singh indicates that he received two incised wounds, as quoted above.

12) Though, as discussed above, it is proved from the evidence on record that accused / appellant Satnam Singh has committed murder of Kulwant singh, it is not proved beyond reasonable doubt if he had a common intention with accused / appellant Baba Singh in voluntarily causing hurt by deadly weapon (sword) to Mula Singh (P.W. 2). There is nothing on record to show that accused / appellant Satnam Singh exhorted accused / appellant Baba Singh to cause hurt, with a deadly weapon on the person of Mula Singh, nor there appears to be4 any prior meeting of mind between the two to commit said offence under Section 324 of the I.P.C.

13) For the reasons, as discussed above, we hold that it is found proved from the evidence on record that accused / appellant Satnam Singh committed murder of Kulwant Singh and was rightly convicted by the trial court under Section 302 of the I.P.C., and sentenced to imprisonment for life. However, his conviction under Section 324 read with Section 34 of the I.P.C. is bad in law as it is not proved from the evidence on record that accused / appellant Satnam Singh had common intention with accused / appellant Baba Singh in voluntarily causing hurt on the person of Mula Sigh (P.W. 2). We also hold on the basis of the evidence on record, that the only charge proved accused / appellant Baba Singh is that of offence punishable under Section 324 of the I.P.C., i.e. voluntarily causing hurt by deadly weapon to Mula Singh (P.W. 2).

As such, he has been rightly found guilty by the trial court of the offence punishable under section 324 of the I.P.C., and accordingly, convicted under said Section. However, accused / appellant Baba Singh is not found to have a common intention, as discussed above, with accused / appellant Satnam Singh in commission of murder of Kulwant singh. That being so, the conviction of accused / appellant Baba Singh under Section 302 / 34 of the I.P.C. and sentence awarded against him there under is bad is law. As far as accused / appellant Harbhajan Singh is concerned, after examining the evidence on record, as discussed earlier, there appears to have neither common intention on his part with accused / appellant Satnam Singh to commit murder of Kulwant Singh (deceased), nor had a common intention or prior meeting of mind with accused / appellant Baba Singh to voluntarily cause hurt with a deadly weapon to Mula Singh (P.W. 2) and there by to commit offence under Section 324 / 34 of the I.P.C.

14) Accordingly, the criminal Appeal No. 1270 of 2001 deserves to the allowed partly, and same is allowed as such. Conviction of accused / appellant Satnam Singh under section 302 of the I.P.C. and sentence of imprisonment for life awarded there under is maintained. However, he is acquitted of charge of offence punishable under Section 324 / 34 of the I.P.C. The conviction and sentence of accused / appellant Satnam Singh under Section 324 / 34 is set aside. Accused / appellant Baba Singh is acquitted of the charge of offence punishable under Section 302 / 34 of the I.P.C. The conviction and sentence awarded against him by the trial court under

Section 302 / 34 of the I.P.C. is set aside. However, his conviction under section 324 of the I.P.C. is maintained. Considering the old age of accused / appellant Baba Singh, who at present appears to be more than 80 years of age, we do not think it proper to award him sentence of imprisonment. Sentence of rigorous imprisonment of two years awarded against him by the trial court is set aside. Instead, we think it proper to release him on probation of good conduct, for a period of one year, under section 4 of the Probation of Offenders Act, 1958, for which he shall submit necessary bonds before the trial court concerned.

15) Criminal Appeal No. 1271 of 2001 is allowed. The conviction of accused / appellant Harbhajan Singh and sentence awarded against him under Section 302 / 34 and under Section 324 / 34 of the I.P.C. is set aside. He is acquitted of both the charges framed against him. Appellant Harbhajan Singh if in jail, be released forthwith, if not wanted in connection with any other crime.

16) The accused / appellant Satnam Singh is on bail. His bail is cancelled. He shall be taken into custody forthwith by the court concerned to make him serve out the sentence. Both the appeals accordingly stand disposed of.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. July 18, 2006.
H. Negi